

§ 525.2

46 CFR Ch. IV (10–1–07 Edition)

(17) *Schedule* means a publication containing the actual rates, charges, classifications, regulations and practices of a marine terminal operator. The term “practices” refers to those usages, customs or modes of operation which in any way affect, determine or change the rates, charges or services provided by a marine terminal operator.

(18) *Terminal facilities* means one or more structures comprising a terminal unit, which include, but are not limited to, wharves, warehouses, covered and/or open storage spaces, cold storage plants, cranes, grain elevators and/or bulk cargo loading and/or unloading structures, landings, and receiving stations, used for the transmission, care and convenience of cargo and/or passengers in the interchange of same between land and water carriers or between two water carriers.

(19) *Terminal services* includes checking, dockage, free time, handling, heavy lift, loading and unloading, terminal storage, usage, wharfage, and wharf demurrage, as defined in this section. The definitions of terminal services set forth in this section shall be set forth in terminal schedules, except that other definitions of terminal services may be used if they are correlated by footnote, or other appropriate method, to the definitions set forth herein. Any additional services which are offered shall be listed and charges therefor shall be shown in the terminal schedule.

(20) *Terminal storage* means the service of providing warehouse or other terminal facilities for the storage of inbound or outbound cargo after the expiration of free time, including wharf storage, shipside storage, closed or covered storage, open or ground storage, bonded storage and refrigerated storage.

(21) *Usage* means the use of a terminal facility by any rail carrier, lighter operator, trucker, shipper or consignee, its agents, servants, and/or employees, when it performs its own car, lighter or truck loading or unloading, or the use of said facilities for any other gainful purpose for which a charge is not otherwise specified.

(22) *Wharf demurrage* means a charge assessed against cargo remaining in or

on terminal facilities after the expiration of free time, unless arrangements have been made for storage.

(23) *Wharfage* means a charge assessed against the cargo or vessel on all cargo passing or conveyed over, onto, or under wharves or between vessels (to or from barge, lighter, or water), when berthed at wharf or when moored in slip adjacent to a wharf. Wharfage is solely the charge for use of a wharf and does not include charges for any other service.

§ 525.2 Terminal schedules.

(a) *Marine terminal operator schedules.* A marine terminal operator, at its discretion, may make available to the public, subject to section 10(d) of the Act, a schedule of its rates, regulations, and practices.

(1) *Limitations of liability.* Any limitations of liability for cargo loss or damage pertaining to receiving, delivering, handling, or storing property at the marine terminal contained in a terminal schedule must be consistent with domestic law and international conventions and agreements adopted by the United States; such terminal schedules cannot contain provisions that exculpate or relieve marine terminal operators from liability for their own negligence, or that impose upon others the obligation to indemnify or hold harmless the terminals from liability for their own negligence.

(2) *Enforcement of terminal schedules.* Any schedule that is made available to the public by the marine terminal operator shall be enforceable by an appropriate court as an implied contract between the marine terminal operator and the party receiving the services rendered by the marine terminal operator, without proof that such party has actual knowledge of the provisions of the applicable terminal schedule.

(3) *Contracts for terminal services.* If the marine terminal operator has an actual contract with a party covering the services rendered by the marine terminal operator to that party, an existing terminal schedule covering those same services shall not be enforceable as an implied contract.

(b) *Cargo types not subject to this part.*

(1) Except as set forth in paragraph (b)(2) of this section, this part does not

apply to bulk cargo, forest products, recycled metal scrap, new assembled motor vehicles, waste paper and paper waste in terminal schedules.

(2) Marine terminal operators which voluntarily make available terminal schedules covering any of the commodities identified in paragraph (b)(1) of this section thereby subject their services with respect to those commodities to the requirements of this part.

(c) *Marine terminal operator agreements.* The regulations relating to agreements to which a marine terminal operator is a party are located at part 535 of this chapter.

§ 525.3 Availability of marine terminal operator schedules.

(a) *Availability of terminal schedules—*

(1) *Availability to the Commission.* A complete and current set of terminal schedules used by a marine terminal operator, or to which it is a party, shall be maintained in its office(s) for a period of five (5) years, whether or not made available to the public, and shall promptly be made available to the Commission upon request.

(2) *Availability to the public.* Any terminal schedule that is made available to the public shall be available during normal business hours and in electronic form. The public may be assessed a reasonable nondiscriminatory charge for access to the terminal schedules; no charge will be assessed against the Commission.

(b) *Access to electronically published schedules.* Marine terminal operators shall provide access to their terminal schedules via a personal computer (PC) by:

(1) Dial-up connection via public switched telephone networks (PSTN); or

(2) The Internet (Web) by:

(i) Web browser; or

(ii) Telnet session.

(c) *Dial-up connection via PSTN.* (1) This connection option requires that terminal schedules provide:

(i) A minimum of a 14.4Kbps modem capable of receiving incoming calls,

(ii) Smart terminal capability for VT-100 terminal or terminal emulation access, and

(iii) Telephone line(s) quality for data transmission.

(2) The modem may be included in a collection (bank) of modems as long as all modems in the bank meet the minimum speed. Smart terminal emulation provides for features such as bold, blinking, underlining and positioning to specific locations on the display screen.

(d) *Internet connection.* (1) This connection option requires that systems provide:

(i) A universal resource locator (URL) Internet address (e.g., <http://www.tariffsrus.com> or <http://1.2.3.4>), and/or

(ii) A universal resource locator (URL) Internet address (e.g., <telnet://tariffsrus> or <telnet://1.2.3.4>), for Telnet session access over the Internet.

(2) Marine terminal operators shall ensure that their Internet service providers shall provide static Internet addresses.

(e) *Commission access.* Commission telecommunications access to systems must include connectivity via a dial-up connection over public switched telephone networks (PSTN) or a connection over the Internet. Connectivity will be provided at the expense of the publishers. Any recurring connection fees, hardware rental fees, usage fees or any other charges associated with the availability of the system are the responsibility of the publisher. The Commission shall only be responsible for the long-haul charges for PSTN calls to a terminal schedule initiated by the Commission.

(f) *Notification.* Each marine terminal operator shall notify the Commission's Bureau of Tariffs, Certification and Licensing ('BTCL'), prior to the commencement of marine terminal operations, of its organization name, organization number, home office address, name and telephone number of firm's representative, the location of its terminal schedule(s), and the publisher, if any, used to maintain its terminal schedule, by electronically submitting Form FMC-1 via the Commission's website at www.fmc.gov. Any changes to the above information shall be immediately transmitted to BTCL. The Commission will publish a list on its website of the location of any terminal schedule made available to the public.